

COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



ARIZONA CORPORATION COMMISSION



0000077097

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DATE: SEPTEMBER 24, 2007

DOCKET NO: T-02871A-07-0094

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Lyn Farmer. The recommendation has been filed in the form of an Order on:

GLOBAL TEL*LINK CORPORATION
(ENCUMBER ASSETS)

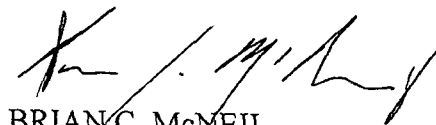
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

OCTOBER 3, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

OCTOBER 23, 2007 and OCTOBER 24, 2007

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 MIKE GLEASON - Chairman
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 KRISTIN K. MAYES
8 GARY PIERCE

9 IN THE MATTER OF THE APPLICATION OF
GLOBAL TEL*LINK CORPORATON FOR
AUTHORIZATION TO ENCUMBER AND/OR
MORTGAGE ITS ASSETS.

DOCKET NO. T-02871A-07-0094

DECISION NO. _____

ORDER

10 Open Meeting
11 October 23 and 24, 2007
12 Phoenix, Arizona

BY THE COMMISSION:

13 Having considered the entire record herein and being fully advised in the premises, the
14 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

15 FINDINGS OF FACT

16 1. On February 9, 2007, Global Tel*Link Corporation ("GTL" or "Applicant") filed with
17 the Arizona Corporation Commission ("Commission") an application for authorization to encumber
18 and/or mortgage its Arizona assets as security for certain debt financing arrangements up to \$250
19 million ("Application").

20 2. GTL caused notice of the Application to be published in the *Arizona Republic* on
21 March 9, 2007.

22 3. On July 2, 2007, the Commission's Utilities Division Staff ("Staff") filed a Staff
23 Report recommending approval of the request for encumbrance and/or mortgage of assets as security
24 for debt financing of up to \$250 million and also recommended GTL be required to procure a
25 performance bond or irrevocable sight draft letter of credit.

26 4. On September 20, 2007, Staff filed a Supplemental Staff Report.

27 5. GTL is a Delaware corporation certificated to provide interstate and international
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1 services pursuant to the authority granted by the Federal Communications Commission and provides
 2 competitive telecommunications services, especially payphones and inmate-only services, throughout
 3 most parts of the country. It is authorized by the Commission to provide pay telephone services in
 4 Arizona pursuant to a Certificate of Convenience and Necessity granted by Commission Decision
 5 No. 59429 (December 20, 1995) and is in good standing with the Corporations Division of the
 6 Commission. GTL is a wholly owned subsidiary of GTEL Holdings, Inc. ("Holdings"), which is
 7 owned by The Gores Group, LLC ("Group"). The Group is comprised of three Delaware limited
 8 partnerships with investment interests in the technology and telecommunications sectors as well as in
 9 private equity funds.

10 6. GTL plans to borrow up to \$250 million, consisting of secured facilities and term loan
 11 agreements, and seeks Commission authorization to pledge and/or mortgage its Arizona assets as
 12 security for the debt. According to the Staff Report, the Applicant will procure the proposed debt
 13 financing at favorable terms, and a portion of the proceeds will be used to liquidate its existing higher
 14 cost debt.

15 7. In addition to liquidating higher cost debt, GTL stated that the proposed financing
 16 arrangements will allow it to achieve the following objectives:

- 17
- 18 a) increase the ability of Applicant to substantially expand its operations in Arizona;
- 19 b) allow a one time distribution by the Applicant to Holdings, the proceeds of which are
 20 applied by Holdings (i) to pay a deferred redemption amount on Holdings preferred
 21 stock, (ii) to pay a dividend on Holdings common stock, and (iii) to contribute to the
 22 Applicant's equity incentive bonus plan, which shall be paid by the Applicant to the
 23 eligible employees participating in the plan through normal payroll procedures;
- 24 c) fund potential acquisitions; and
- 25 d) provide Applicant with the financial resources necessary to compete effectively with
 26 other service providers in Arizona.¹

27 8. According to the Applicant, the transactions are solely financial arrangements that will
 28 not affect the day-to-day operations and will be entirely transparent to customers. GTL states that the
 proposed debt financing arrangements and transactions will serve the public interest by enhancing its
 ability to continue to provide uninterrupted services and allowing it to significantly expand its

¹ Application, p. 4.

1 operations, thereby increasing competition in Arizona.

2 9. A.R.S. § 40-301 provides that foreign public service corporations providing
3 communications services within the state whose physical facilities are also used in providing
4 communications service in interstate commerce are not required to obtain authorization from the
5 Commission to issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness
6 payable at periods of more than twelve months. In its Supplemental Staff Report filed on September
7 20, 2007, Staff concluded that pursuant to A.R.S. § 40-301(D), GTL's financing is exempt from
8 Commission approval.

9 10. However, A.R.S. § 40-285 requires public service corporations to obtain Commission
10 authorization to encumber certain utility assets. According to Staff, the statute serves to protect
11 captive customers from a utility's disposition of assets that are necessary for the provision of service,
12 thereby preventing any service impairment due to disposal of critical assets necessary to provide
13 service.

14 11. Staff reviewed the proposed transactions and concluded that GTL's proposal to
15 encumber its Arizona assets may not inhibit its ability to continue to serve Arizona customers. Staff
16 stated that customers could readily procure similar services from alternate providers in the event that
17 the Applicant defaults on its debt obligation.² However, Staff noted that customers may still have
18 exposure to losses to the extent that they have prepaid for service or made deposits. Accordingly,
19 Staff recommended that any authorization for encumbrances should also provide customer protection
20 for prepayments and deposits.

21 12. Based on its review of the proposed transactions, Staff determined that GTL's
22 proposal to use a portion of its new debt financing to extinguish existing high cost long-term debt, to
23 expand operations in Arizona, and to generate sufficient resources necessary to effectively compete
24 with other service providers in Arizona is in the public interest. However, Staff expressed concern
25 over Applicant's plan to distribute a portion of the debt proceeds to Holdings, its parent company, to
26 pay deferred redemption on Holdings preferred stock, to pay a dividend on Holdings common stock,

27 _____
28 ² Presumably, for those inmate customers with access to only Applicant's payphones, Staff assumes that the correctional facility will ensure that inmates have alternative access.

1 and to contribute to Applicant's equity incentive bonus plans. Staff indicated that these purposes
2 might not be in the public interest or consistent with sound financial practices. In response to Staff's
3 concerns, Applicant argued that the distribution was a return on the original capital invested and
4 reflects the strong performance of the business, and that the debt providers were aware of the use of
5 the funds and had concluded that the remaining assets and cash flows of the business were sufficient
6 to service the debt. Staff agreed that the lender is a sophisticated investor with sufficient knowledge
7 and experience to evaluate the merits and risks of its investment. Given that Applicant's customers
8 have alternate service provider choices to mitigate any inconvenience that would occur from
9 Applicant's inability to provide service, that Applicant's Arizona assets constitute only one percent of
10 its assets, and that Applicant will be required to post a bond or letter of credit, Staff's concerns about
11 the use of the proceeds to pay dividends and for redemption of preferred stock were mitigated.

12 13. Staff recommends approval of GTL's request for authorization to encumber and/or
13 mortgage its Arizona assets as security for debt financing up to \$250 million.

14 14. Staff recommends that the Commission order GTL to procure a performance bond or
15 an irrevocable sight draft letter of credit, which is excluded from the pledged assets, in an aggregate
16 amount no less than the balance of customer deposits and prepayments. We agree with Staff's
17 recommendation but will also require the minimum amount of the bond/letter to be \$10,000, in
18 recognition that many of its customers are inmate payphone users with limited or no access to
19 alternate providers. Staff recommends that GTL provide the original performance bond or irrevocable
20 sight draft letter of credit to the Commission's business office for safekeeping and file proof of the
21 performance bond or irrevocable sight draft letter of credit in Docket Control.

22 15. Staff recommends that GTL be authorized to engage in any transactions and to execute
23 or cause to be executed any documents necessary to effectuate the authorizations requested in the
24 application.

25 16. Staff states that a search of the Consumer Services database beginning January 1,
26 2004, through February 2007 indicates that the Applicant has had no complaints, inquiries, or
27 opinions.

28 17. Staff's recommendations, as modified herein, are reasonable and should be adopted.

CONCLUSIONS OF LAW

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2 1. Applicant is a public service corporation within the meaning of Article XV of the
3 Arizona Constitution, A.R.S. § 40-285, and A.A.C. R14-2-801 *et seq.*

4 2. The Commission has jurisdiction over the Applicant and the subject matter of the
5 application.

6 3. Notice of the application was given in accordance with the law.

7 4. The encumbrance approved herein is for the purposes stated in the application and is
8 reasonably necessary for those purposes.

9 5. Pursuant to A.R.S. § 40-301, Commission approval of the financing is not required.

ORDER

10
11 IT IS THEREFORE ORDERED that the application by Global Tel*Link Corporation for
12 authorization to encumber assets for security for debt financing up to \$250 million as provided for
13 herein, shall be, and hereby is, granted, subject to the condition that Global Tel*Link Corporation
14 obtains and maintains a performance bond or irrevocable sight draft letter of credit as set forth herein,
15 which is excluded from the pledged assets, and provides the original to the Commission's business
16 office for safekeeping and files the appropriate copies with Docket Control, as a compliance item in
17 this docket, within 60 days of the effective date of this Decision.

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1 IT IS FURTHER ORDERED that Global Tel*Link Corporation is hereby authorized to
 2 engage in any transactions and to execute or cause to be executed any documents so as to effectuate
 3 the authorizations granted herein.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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 7
 8 CHAIRMAN

COMMISSIONER

9
 10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
 12 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim
 13 Executive Director of the Arizona Corporation Commission,
 14 have hereunto set my hand and caused the official seal of the
 Commission to be affixed at the Capitol, in the City of Phoenix,
 this ____ day of _____, 2007.

15
 16 DEAN S. MILLER
 INTERIM EXECUTIVE DIRECTOR

17
 18 DISSENT _____

19 DISSENT _____

SERVICE LIST FOR:

GLOBAL TEL*LINK CORPORATION

DOCKET NO.:

T-02871A-07-0094

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